

PTO/SB/21 (08-00)

Approved for use through 10/31/2002. OMB 0651-0031

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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TRANSMITTAL FORM <i>(to be used for all correspondence after initial filing)</i>	Application Number	09/396,530	
	Filing Date	09/15/1999	
	First Named Inventor	Randall A. Addington	
	Group Art Unit	3711	
	Examiner Name	William Pierce	
Total Number of Pages in This Submission		11	
		Attorney Docket Number	99-1002

ENCLOSURES <i>(check all that apply)</i>		
<input checked="" type="checkbox"/> Fee Transmittal Form <input checked="" type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Assignment Papers <i>(for an Application)</i> <input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input checked="" type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group <i>(Appeal Notice, Brief, Reply Brief)</i> <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) <i>(please identify below):</i>
Remarks		

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JUL 08 2002
GROUP 3700

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual name	Joel I. Rosenblatt
Signature	<i>Joel I. Rosenblatt</i>
Date	07/08/2002

CERTIFICATE OF MAILING <i>by facsimile</i>	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231 on this date: _____	
Typed or printed name	Joel I. Rosenblatt (Sent by facsimile to 703 872 19303)
Signature	<i>Joel I. Rosenblatt</i>
Date	7/8/2002

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

PTO/SB/17 (10-01)

Approved for use through 10/31/2002. OMB 0551-0032
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FEE TRANSMITTAL
for FY 2002

Patent fees are subject to annual revision.

TOTAL AMOUNT OF PAYMENT (\$) **130.00****Complete if Known**

Application Number	09/396,530
Filing Date	09/15/1999
First Named Inventor	Randall A. Addington
Examiner Name	William Pierce
Group Art Unit	3711
Attorney Docket No.	99-1002

FAX RECEIVED**JUL 08 2002****GROUP 3700****METHOD OF PAYMENT**

- 1.
- ☐
- The Commissioner is hereby authorized to charge indicated fees and credit any overpayments to:

Deposit Account Number	
Deposit Account Name	

- ☐ Charge Any Additional Fee Required Under 37 CFR 1.16 and 1.17
- ☐ Applicant claims small entity status. See 37 CFR 1.27

- 2.
- ☐
- Payment Enclosed:

☐ Check ☒ Credit card ☐ Money Order ☐ Other

FEE CALCULATION**1. BASIC FILING FEE**

Large Entity Small Entity

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	Fee Paid
101	740	201	370	Utility filing fee	
106	330	206	165	Design filing fee	
107	510	207	255	Plant filing fee	
108	740	208	370	Reissue filing fee	
114	160	214	80	Provisional filing fee	

SUBTOTAL (1) (\$) **130.00****2. EXTRA CLAIM FEES**

Total Claims	Extra Claims	Fee from below	Fee Paid
Independent	-20** =	X	
Multiple Dependent	-3** =	X	

Large Entity Small Entity

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	Fee Paid
103	18	203	9	Claims in excess of 20	
102	84	202	42	Independent claims in excess of 3	
104	280	204	140	Multiple dependent claim, if not paid	
109	84	209	42	** Reissue independent claims over original patent	
110	18	210	9	** Reissue claims in excess of 20 and over original patent	

SUBTOTAL (2) (\$) **0.00**

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)**3. ADDITIONAL FEES**

Large Entity Fee Code	Large Entity Fee (\$)	Small Entity Fee Code	Small Entity Fee (\$)	Fee Description	Fee Paid
105	130	205	65	Surcharge - late filing fee or oath	
127	50	227	25	Surcharge - late provisional filing fee or cover sheet	
139	130	139	130	Non-English specification	
147	2,520	147	2,520	For filing a request for ex parte reexamination	
112	920*	112	920*	Requesting publication of SIR prior to Examiner action	
113	1,840*	113	1,840*	Requesting publication of SIR after Examiner action	
115	110	215	55	Extension for reply within first month	
116	400	216	200	Extension for reply within second month	
117	920	217	460	Extension for reply within third month	
118	1,440	218	720	Extension for reply within fourth month	
128	1,960	228	980	Extension for reply within fifth month	
119	320	219	160	Notice of Appeal	
120	320	220	160	Filing a brief in support of an appeal	
121	280	221	140	Request for oral hearing	
138	1,510	138	1,510	Petition to institute a public use proceeding	
140	110	240	55	Petition to revive - unavoidable	
141	1,280	241	640	Petition to revive - unintentional	
142	1,280	242	640	Utility issue fee (or reissue)	
143	460	243	230	Design issue fee	
144	620	244	310	Plant issue fee	
122	130	122	130	Petitions to the Commissioner	130.00
123	50	123	50	Processing fee under 37 CFR 1.17(q)	
126	180	126	180	Submission of Information Disclosure Stmt	
581	40	581	40	Recording each patent assignment per property (times number of properties)	
145	740	245	370	Filing a submission after final rejection (37 CFR § 1.129(a))	
149	740	249	370	For each additional invention to be examined (37 CFR § 1.129(b))	
179	740	279	370	Request for Continued Examination (RCE)	
169	900	169	900	Request for expedited examination of a design application	

Other fee (specify) _____

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$) **130.00****SUBMITTED BY**Name (Print/Type) **Joel I. Rosenblatt**Registration No. (Attorney/Agent) **26025****Complete (if applicable)**Telephone **321 727 7626**Signature *Joel I. Rosenblatt*Date **7/8/02****WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR CREDIT CARD INFORMATION TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

Application Number: 09/396,530

Group Art Unit: 3711

Filing Date: 9/15/99

Examiner Name: William Pierce

Inventors: Randall Addington et al.

Attorney Docket No.: 99-1002

Title: Method For Improving Bowler's Control

Assistant Commissioner of Patents

Washington, D.C. 20231

By Facsimile: 703-872-9303

#27
NDB
7-9-02

37 C. F. R. 1.181 Petition Under 37 C. F. R. 1.113(a)

Applicants petition the Assistant Commissioner for Patents to vacate and remove Examiner's Objection Under 37 CFR 1.83(a) and 1.81(c); and Applicants, as part of this Petition, request the fee sent with this Petition be refunded.

I.

This Petition is Timely Filed

Examiner's Final Rejection containing an objection to the drawing, was mailed 6/24/02. This petition is to vacate Examiner's objection, made in the Final Rejection and is timely filed, on or about July 8, 2002.

II.

Background

In Paper No. (No paper number given, Confirmation No. 7581), mailed 6-24-02, objection was made to the drawings under 37 CFR 1.83(a) and 1.81(c), as stated by Examiner, requires "the [method] steps of claims 14-30 must be shown or the features cancelled from the claims." See page 2, paragraph 4, subparagraph b.

In support, Examiner states,

The pending claims call for call for 'forces' of lift, relationships between the finger, the finger shield, and the ball, pressure, directions of forces and etc.

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01 FC:122

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Petition to Commr., Appln 396,530, filed 9/16/99, Randall A. Addington, et al., page 2, sent 7-8-02

Using claim 14 by way of example, the drawings fail to show 'applying a force from said finger ...', '...producing a second force in a second direction', 'receiving said second force in said second direction' and 'contact area made between said finger pad of a bowler ans (sic) and said first surface,'
and,

The drawing failure to illustrate the positive steps of the claims
make them incomplete,

and,

In accordance with 37 CFR 1.81(c), where a drawing is not
necessary for the understanding of the inventin,(sic) but the
subject matter sought to be patented admits of illustration.(sic)
"The examiner should require such drawings in almost all
instances."

III.

Examiner's Objection Should Be Vacated

A. Examiner's Objection denies Applicants equal protection under law.

1. All claims pending are all method claims.
2. Examiner's objection is contrary to, and in direct conflict with the Manual of Patent Examining Procedure §601.01(f) Applications Filed Without Drawings, which states,

It has been USPTO practice to treat an application that contains
at least one process or method claim as an application for which
a drawing is not necessary for an understanding of the invention
under 35 U.S.C. 113 (first sentence).

3. Examiner's requirement of a drawing, in view of the direction given by the MPEP, imposes a disparate standard on the Applicants compared to the MPEP imposed drawing standard for method claims.
4. Examiner himself, has admitted the control exercised over the examination of patents, by the direction given in the MPEP. See Paper No. (No paper number given, Confirmation No. 7581), mailed 6-24-02 4), Section 4, paragraph b, lines 28-29, referring to MPEP §608.02(e),

Application Number: 09/396,530

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JUL 8 - 2002

Group 3700

Assistant Commissioner of Patents

Washington, D.C. 20231

By Facsimile: 703-872-9303

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JUL 08 2002

GROUP 3700

37 C. F. R. 1.181 Petition Under 37 C. F. R. 1.113(a)

Applicants petition the Assistant Commissioner for Patents to vacate and remove Examiner's Objection Under 37 CFR 1.83(a) and 1.81(c); and

Applicants, as part of this Petition, request the fee sent with this Petition be refunded.

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In support, Examiner states,

The pending claims call for call for 'forces' of lift, relationships between the finger, the finger shield, and the ball, pressure, directions of forces and etc.

Petition to Commr., Appln 396,530, filed 9/16/99, Randall A. Addington, et al., page 8, sent 7-8-02

Wherefor , Applicants petition the Honorable Commissioner of Patents to vacate Examiner's Objection to the drawings. made in the Final Rejection, Paper No. (No paper number given, Confirmation No. 7581, mailed 6-24-0), and to refund this Petition Fee.

 01/08/2002

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Petition to Commr., Appln 396,530, filed 9/16/99, Randall A. Addington, et al., page 3, sent 7-8-02 and Paper No. 12, mailed 02/26/02, page 12, lines 8-12, stating,

Appellant, as a patent professional, should be aware by now that the examination of patents is conducted in accordance with the Manual of Patent Examining Procedure. The examination of applications is covered in chapter 700. If the applicant is not familiar with the MPEP, can (sic) find a copy on the PTO web site at USPTO.gov. Hence, all of Appellant's remarks will be responded to in accordance with the MPEP . . .

5. Examiner's objection, which Examiner says , ". . . is conducted in accordance with the Manual of Patent Examining Procedure," however, is not in accordance with the directions given in MPEP §601.01(f), and Examiner has denied Applicants equal treatment under law and the Objection should be vacated.

B. Examiner's objection is frivolous, as lacking legal support

1. 35 USC 112 requires the specification describe the invention and the manner and process of using it, as to enable any person skilled in the art to use the invention in its best mode.
2. 35 USC 113 (first sentence), requires a drawing where necessary for the understanding of the subject matter sought to be patented.
3. 37 CFR 1.83(a) recognizes that conventional features which may be disclosed in the claims and the detailed illustration of these features may not be essential for the proper understanding of the invention. In this case, Rule 1.83(a) permits these features to be illustrated in a graphical drawing symbol or a labeled rectangular box.
4. 37CFR 1.83(a), when read in the context of 35 USC 112 and 113, and the interpretation given by MPEP §601.01(f), stated in the MPEP as,

It has been USPTO practice to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence),

demonstrat ,

Petition to Commr., Appln 396,530, filed 9/16/99, Randall A. Addington, et al., page 4, sent 7-8-02

- a) Accordingly, Rule 1.83(a) does not require drawings to illustrate a method claim;
 - b) 35 USC 112, 113, require drawings only for a for a proper understanding of the invention by one skilled in the art; and
 - c) while, as Examiner states, MPEP §608.02(e) given the examiner the responsibility for determining the completeness of the drawings, the authority for requiring drawings for method claims is controlled by 35 USC 112, 113, Rule 1.83(a) and MPEP §601.01(f), as, treating an application containing a method claims as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).
5. Examiner has misapplied Rule 1.83(c) which does not support the proposition stated by Examiner therefor (See Paper No. (No paper number given, Confirmation No. 7581), mailed 6-24-02), Section 4, paragraph b.)
6. Examiner has no basis in law for his reliance on 35 CFR 1.83(a) or 1.81(c) for the Objection made to Applicant's drawings.

C. Examiner's objection is frivolous, as lacking support of, and failing the examination standard of, substantial evidence.

1. In Paragraph 4, subparagraph c, page 3, Examiner states the Marinese reference shows,
- a) "lift" and "release," of the bowling ball;
 - b) the transmitting of "forces applied from the bowler's fingers to the finger pad and then to the bowling ball to control the release and the lift placed on the ball as called for in [claim 14] steps d-f;"
 - c) Marinese by inherency discloses 'applying a first force, producing a second force, and how these forces interact with the finger pad and bowling ball'; and,
 - d) that the claimed inventive method for transmitting 'forces from the bowler's hand to the bowling ball are old and well known.'
2. While Applicants do not admit the claimed invention is disclosed in any reference cited by examiner, directly, by inherency, or in any other manner, Examiner has admitted he believes the claimed method steps are old and well know, which means well known to those skilled in the art.
3. Accordingly, Examiner has limited his objection to his conclusion that these features,

Petition to Commr., Appln 396,530, filed 9/16/99, Randall A. Addington, et al., page 5, sent 7-8-02
stated by Examiner as,

forces' of lift,
relationships between the finger, the finger shield, and the ball,
pressure, directions of forces and etc.,

and,

applying a force from said finger,
producing a second force in a second direction,
receiving said second force in said second direction,
contact area made between said finger pad of a bowler and said first
surface,

even though admitted by Examiner as "old and well known," are required to be shown in the
drawings, "as positive steps of the claims . . . "

4. The examination standard for patents is the standard of substantial evidence, requiring
Examiner's findings be supported by substantial evidence in the record. The substantial
evidence standard of review for a Patent Office rejection requires a complete record of all of
the facts and reasoning that were used or should have been used, in support of the
Examiner's conclusions.

The substantial evidence standard requires a finding of such
relevant evidence as a reasonable mind might accept as
adequate to support a conclusion.

In re. Zurko 258 F.3d 1379 (Fed. Cir) 2001, at 1384.

Basic knowledge or common sense, which is not based on any evidence
in the record, lacks substantial evidence support.

id. at 1385.

Patent Office expertise is restricted to the support of conclusions "as to peripheral issues,"
However,

With respect to core factual findings in a determination of
patentability ... the [Examiner] cannot simply reach conclusions
based on its own understanding or experience -or on
[Examiner's] assessment of what would be basic knowledge or
common sense.

Petition to Commr., Appln 396,530, filed 9/16/99, Randall A. Addington, et al., page 6, sent 7-8-02

Rather, the [Examiner] must point to some concrete evidence in the record in support of..
[Examiner's] findings.

Id at 1385, 1386.

Required in support of a rejection is concrete evidence in the record. *In re. Zurko* 258 F.3d 1379 (Fed. Cir) 2001, at 1386.

Examiner's grounds for rejection must be reversed when factual findings underlying Examiner's stated grounds of rejection are not supported by concrete evidence in the record. *In re. Zurko* 258 F.3d 1379 (Fed. Cir) 2001, at 1386

5. Referring to Paragraphs 3 and 4, above, Examiner has not stated any record facts to support his conclusion these claimed elements reciting a method, as stated by Examiner in Paper No. (No paper number given, Confirmation No. 7581, mailed 6-24-02), Section 4, paragraph (c), page 3, "to transmit forces from a bowler's hand to a bowling ball which is old and well known," are required to be shown in the drawings as necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).

D. Examiner's Objection, is substantively stated as a rejection and should be vacated as improperly stating an objection to formalities or Examiner should be made to restate the objection in conformance with the substantial evidence standard for examination, as set forth in III., c. above.

1. MPEP §706.01 Rejection Contrasted With Objections states,

The refusal to grant claims because the subject matter as claimed is considered unpatentable is called a "rejection." The term "rejected" must be applied to such claims in the examiner's action. If the form of the claim (as distinguished from its substance) is improper, an "objection" is made. . . . The practical difference between a rejection and an objection is that a rejection, involving the merits of the claim, is subject to review by the Board of Patent Appeals and Interferences, while an objection, if persisted, may be reviewed only by way of petition to the Commissioner.

2. A fair statement of what Examiner has said in Paper No. (No paper number given,

Petition to Commr., Appln 396,530, filed 9/16/99, Randall A. Addington, et al., page 7, sent 7-8-02

Confirmation No. 7581, mailed 6-24-02), Section 4, paragraphs a. and b., is,

I have looked at the drawings and the method claimed steps and in my judgment, the drawings do not support the claimed step recited elements as would be necessary for one skilled in the art to understand the claimed invention under 35 USC 113 (first sentence).

3 Examiner has offered his judgement but has not stated the facts in support thereof, under the substantial evidence standard, relevant to what is known in the art, and, comparing the knowledge of one skilled in the art, the claimed invention and the drawings, why each identified element would not be understood by one skilled in the art.

IV.

Applicants request the Petition Fee be refunded to Applicants

1. Applicants' Petition submitted 02/18/2002, asked Commissioner of Patents to vacate Examiner's stated Objection to Applicants' drawing, under 37 CFR 1.83(a).
2. The answer to the Petition, given by E. Rollins-Cross, Director. Patent Examining Groups 3710 and 3720, referred the Objection to the Examiner and Examiner's Supervisory Patent Examiner, as an issue to be resolved, and in effect, giving Examiner another opportunity to state the Objection. See Paper no. 25.
3. While Applicants' have no objection to a thorough examination, on the condition the application is not unduly delayed, Group Director's response to Applicant's Petition left applicant without an answer, pending clarification of the Objection by Examiner and Examiner's Supervisor.
4. Now that Examiner has had the opportunity to clarify the Objection, Applicant is made to undergo the filing of the same petition to the same Objection, which is made necessary by Group Director's decision to remand.
5. Accordingly, as this Petition asks Group Director to decide whether Examiner's objection to the drawings should be vacated and is the same petition as earlier made on 02/18/02, which did not receive a resolution, therefor making this refiling necessary, Applicants request this Petition Fee be refunded to Applicants' attorney.

Petition to Commr., Appln 396,530, filed 9/16/99, Randall A. Addington, et al., page 8, sent 7-8-02

Wherefore, Applicants petition the Honorable Commissioner of Patents to vacate Examiner's Objection to the drawings. made in the Final Rejection, Paper No. (No paper number given, Confirmation No. 7581, mailed 6-24-0), and to refund this Petition Fee.

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